



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 29 November 2016
Ref. no.: RK1008/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI99/16

Applicant

MuhamedAli Ceyşülmedine

**Constitutional review of
Decision Ac. no. 35/2003 of the District Court in Prizren
of 23 June 2004**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by MuhamedAli Ceyşülmedine from Prizren (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Decision Ac. no. 35/2003 of the District Court in Prizren of 23 June 2004.

Subject matter

3. The subject matter is the request for constitutional review of the challenged decision, which allegedly violates Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 54 [Judicial Protection of Rights], and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 29 June 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 17 July 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 22 July 2016, the Court notified the Applicant about the registration of the Referral and asked him to fill in the Referral Form and clarify his Referral.
8. On 2 August 2016, the Court informed the Basic Court in Prizren about the registration of the Referral. At the same time, the Court requested the Basic Court in Prizren to inform the Court at what stage are the proceedings in this matter.
9. On 4 August 2016, the Applicant submitted to the Court the completed Referral Form.
10. On 11 August 2016, the Basic Court in Prizren (letter Ndr. No. 364/04) informed the Court that the proceedings are pending and that the next hearing is scheduled for 23 September 2016, at 13:30 hrs.
11. On 17 October 2016, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of general facts

12. On 7 April 1949, the Executive Authority of the People's Council of the city of Prizren (Decision no. 6867) was ordered the demolition of the building with a total surface area of 67 m², a property of Qazim Hoxha (the father of the Applicant) because the building „is old and with tendency to collapse”.
13. The heirs of Qazim Hoxha conducted proceedings before the courts of the Federal Republic of Yugoslavia, but the proceedings were always remanded to the first instance court for retrial.
14. On an unspecified date, the Applicant and other heirs of Qazim Hoxha requested the Municipal Court in Prizren „that the court renders a decision, by which will be paid compensation to former owners of the expropriated property in cash in the amount determined by court, by engaging a competent expert”.
15. On 11 June 2002, the Municipal Court (Decision Ndr. no. 6/98) determined “the compensation for the expropriated immovable property [...] in the total amount of 469.000 (four hundred sixty-nine thousand) euro” and obliged “the user of the expropriation – Municipality of Prizren - that former owner Qazim Hoxha, [...] respectively his legal heirs [...], be compensated for the expropriated immovable property” in the said amount
16. The municipal public attorney filed an appeal on the grounds of essential violations of the contested procedure provisions, erroneous determination of factual situation and erroneous application of the substantive law.
17. On 23 June 2004, the District Court in Prizren (Decision Ac. no. 35/2003) approved as grounded “the appeal of the municipal public attorney quashed the Decision the Municipal Court and remanded the case for reconsideration”.
18. On 19 November 2004, the Applicant filed with the Supreme Court of Kosovo a request for revision against the Decision of the District Court.
19. In addition, the Applicant sent a larger number of letters, petitions and requests to various institutions, namely to the European Court of Human Rights, the European Parliament and the EULEX Mission in Kosovo.
20. On 3 April 2015, the EULEX Mission in Kosovo responded to the three letters of the Applicant, informing that EULEX “does not have a mandate to take over the civil cases”.

Applicant's allegations

21. The Applicant claims that “everywhere at all the public authorities in Kosovo, (...) there is an abuse of official authority; the Prosecution Office included”.
22. Furthermore, the Applicant does not reason how certain articles of the Constitution have been violated. Even though, he states what follows.

*“There is no equality before the law in Kosovo.
 There is no right to fair and impartial trial in Kosovo (in practice).
 The Law is rather a dried ink on paper compared to the practice.
 In my case, there is no protection of property. See Article 46 of the
 Constitution of the Republic of Kosovo.
 In my case, there is no judicial protection of rights. See Article 54 of the
 Constitution of the Republic of Kosovo.
 Pursuant to Article 119 of the Constitution of Kosovo, there must be
 safeguards for public and private property. In my case, there is no
 safeguard for private property”.*

23. The Applicant proposes to the Court to:

*“... approve Judgment Ndr. no. 6/98 of the first instance court in Prizren,
 of 11 June 2002, with the penalty interest rate starting from the date when
 the Judgment was received, and the respondent is obliged to pay the
 compensation for the expropriated business premises, and that the unfair
 decision of the second instance court of that time be annulled, because it is
 based on the previously annulled decisions...”*

Admissibility of the Referral

24. The Court examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

25. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

*1. The Constitutional Court decides only on matters referred to the court in
 a legal manner by authorized parties”.*
[...]

*7. Individuals are authorized to refer violations by public authorities of
 their individual rights and freedoms guaranteed by the Constitution, but
 only after exhaustion of all legal remedies provided by law.*

26. The Court also refers to paragraph 2 of Article 47 [Individual Requests] of the Law, which provides:

*The individual may submit the referral in question only after he/she has
 exhausted all the legal remedies provided by the law.*

27. The Court further takes into account Rule 36 (1) b) of the Rules of Procedure, which foresees:

*The Court may consider a referral if all effective remedies that are
 available under the law against the judgment or decision challenged have
 been exhausted.*

28. In that respect, the Court recalls that, on 11 August 2016, the Basic Court in Prizren informed that the proceedings are pending and that a hearing is scheduled for 23 September 2016, at 13:30 hrs. Thus the legal remedies available have not been exhausted.
29. The Court emphasizes that the rule of exhaustion of legal remedies, under Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) b) of the Rules of Procedure, obliges those individuals who want to bring their case before the Court to first use all legal remedies provided by law.
30. The regular courts must be afforded with the opportunity to correct their eventual errors through a regular judicial proceeding before the case comes to the Court. This rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR that under the domestic legislation there are legal remedies before the regular courts available in respect of the alleged errors, regardless of whether or not the provisions of the ECHR are incorporated in national law. (See, *inter alia* *Aksoy v. Turkey* paragraph 51 of ECtHR Judgment of 18 December 1996).
31. The principle is that the machinery of protection established by the constitutional judiciary is subsidiary to the regular system of judiciary safeguarding human rights. (See *inter alia*, *Handyside v. United Kingdom* paragraph 48 of ECtHR Judgment of 7 December 1976)
32. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violations. The existence of such remedies must be sufficiently certain not only in theory but also in practice, and if this is not so, those remedies will lack the requisite accessibility and effectiveness. (See, *inter alia*, *Vernillo v. France* paragraph 27, ECtHR Judgment of 20 February 1991, and *Dalia v. France*, paragraph 38, ECtHR Judgment of 19 February 1998).
33. It falls to the Court to examine whether the legal remedies have been exhausted, effective, available in theory and practice at the relevant time, that is, that the remedy was available, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success. (See, *inter alia*, *Civet v. France* paragraphs 42-44 of ECtHR Judgment of 28 September 1999).
34. The Court notes that the challenged Decision remanded the case for reconsideration to the Municipal Court in Prizren, where it is still pending.
35. In addition, according to the Applicant's information, on 19 November 2004, he filed a request for revision with the Supreme Court of Kosovo against the Decision of the District Court.
36. The Court notes that the proceedings before the regular courts have not been completed yet, and thus the Referral is premature.

37. In this case, the Court reiterates that the regular courts are independent in the exercise of its judicial power and its constitutional duty is to interpret the questions of fact and law which are relevant to the cases brought before them.
38. The rationale for the rule that the proceedings before the regular courts must first be completed in order to afford the regular courts, the opportunity to put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of the constitutional rights (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo*, case KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR *Selmouni vs. France*, No. 25803/94, decision of 29 July 1999).
39. For all the foregoing reasons, the Court will not enter into considering other alleged violations of the Constitution invoked by the Applicant, as he has not fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
40. Therefore, the Court finds that the proceedings before the regular court are still pending and, accordingly, the Applicant's Referral is inadmissible, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) b) of the Rule of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rules 36 (1) (b) and 56 of the Rules of Procedure, in the session held on 17 October 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Arta Rama-Hajrizi

